

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARVIN WADDLETON III §
v. § CIVIL ACTION NO. 6:07cv538
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Marvin Waddleton, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Waddleton was convicted of theft on August 17, 2005, receiving a sentence of 10 years in prison. In his federal petition, Waddleton asserts that: (1) the evidence was insufficient to support the conviction because the “co-owner,” his mother Emily Waddleton, had given written permission and had suffered no loss; (2) the complaint given to the Tyler police department by the “co-owner” falsely stated that she had not given permission, and should be treated as aggravated perjury; (3) extraneous offenses, including the prior conviction used for enhancement as well as the unadjudicated possession charge, were offered during the guilt-innocence phase of the trial; (4) the prosecutor committed misconduct by making inflammatory comments about Waddleton not testifying, implying that Waddleton did not testify because the truth had already been told, and made comments concerning Waddleton’s self-representation, implying that this suggested his guilt; and (5) the Hispanic and black venire members were placed at the rear of the list, and the prosecutor

exercised peremptory challenges to remove Hispanic and black persons, resulting in the selection of an all-white jury.

The Magistrate Judge ordered the Respondent to answer, and received copies of the state court records. Waddleton did not file a response to the answer *per se*, but filed a motion for summary judgment, which the Magistrate Judge construed as incorporating a response to the answer. After review of the pleadings, the Magistrate Judge issued a Report on May 19, 2008, recommending that the petition be denied and that Waddleton be denied a certificate of appealability *sua sponte*.

Waddleton filed objections to the Magistrate Judge's Report on June 9, 2008. In his objections, Waddleton does not specifically challenge any of the Magistrate Judge's proposed findings or conclusions, but instead recites the facts from his point of view, requests discovery of jail records and phone records, states that Emily Waddleton is suffering from paranoia, and reiterates his claims using somewhat different arguments and citations of law. Nothing in Waddleton's objections shows that the Magistrate Judge's Report was incorrect in any way. Waddleton's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the answer filed by the Respondent, the Petitioner's motion for summary judgment, the state court records, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Marvin Waddleton is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 7th day of August, 2008.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**